

REMARKS

Following entry of the foregoing amendments, claims 24-27 and 30-40 constitute the pending claims in the present application. Claims 28-29 and 41-56 are cancelled. Claims 24, 32, and 35-37 are currently amended.

In the office action dated February 8, 2005, claims 24-28 and 30-56 are rejected, and claim 29 is objected to. Claims 24-28, 30, 31, 33-39, 41-46, 48-53, 55 and 56 are rejected under 35 U.S.C 102(e) as being anticipated by US 6,273,852 to Lehe et al. ("Lehe"). Claims 32 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lehe in view of US 6,042,534 to Gellman et al. ("Gellman"). Claims 40 and 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lehe in view of US 5,899,909 to Claren et al. ("Claren"), and further in view of US 5,741,323 to Pathak et al. ("Pathak"). Claims 24, 25, 27, 28, 29-36, 41, 43-50, 55, and 56 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 4, and 6-13 of US 6,689,047 to Gellman ("047 patent").

Claim 29 is objected to as being dependant upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicants hereby amend claim 24 to incorporate the limitations of claim 29 and claim 28, which are now cancelled. Applicants also amend claim 24 to recite that the dilator is about 0.5 centimeters to about 4 centimeters in width at the second end of the dilator. Similarly, claim 32 is amended to recite that the sling is about 0.5 centimeters to about 4 centimeters in width. Support for these amendments can be found in the specification at least in paragraphs 0040 and 0050. These amendments present no new matter. Since the limitations from allowable claim 29 have been incorporated into claim 24, Applicants request that the Examiner pass this claim to allowance. Given that claims 25-27 and 30-40 variously depend from claim 24 and recite further limitations thereon, Applicants also request that the Examiner pass these claims to allowance.

Claims 35-37 are amended to correct matters of form. These amendments present no new matter.

Claims 41-56 are cancelled without prejudice.

Applicants respectfully request reconsideration in view of the following remarks. Issues raised by the Examiner are addressed below in the order they appear in the prior Office Action.

1. The Amended Claims Patentably Distinguish Over Lehe

Claims 24-28, 30, 31, 33-39, 41-46, 48-53, 55 and 56 are rejected under 35 U.S.C 102(e) as being anticipated by US 6,273,852 to Lehe et al ("Lehe"). The Office contends that Lehe discloses a dilator coupled to an end of a needle 10 and points to a rectangular segment which is unlabeled and unmentioned in Lehe. Applicants submit that this unmentioned element is not a dilator but rather a shrink tube and refer the Examiner to US 5,899,909 where this element is described. Nevertheless, claim 24 is amended to incorporate limitations from allowable claim 29 and, as such, patentably distinguishes over Lehe. In particular, Lehe does not teach or suggest a dilator coupled to an end of a needle, wherein a width of the dilator increases from a first end of the dilator towards a second end of the dilator, and wherein the dilator is about 0.5 centimeters to about 4 centimeters in width at the second end of the dilator. Applicants request that the Examiner reconsider and withdraw the 35 USC 102(e) rejection of claim 24 based on Lehe and pass this claim to allowance. Since claims 25-27 and 30-40 variously depend from claim 24 and recite further limitations thereon, Applicants also request that the Examiner pass these claims to allowance. Claims 41-56 are cancelled rendering the rejection of these claims moot.

2. The Amended Claims Are Non-Obvious Over Lehe in View of Gellman, Claren, and Pathak

Claims 32 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lehe in view of US 6,042,534 to Gellman et al. ("Gellman"). Claims 40 and 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lehe in view of US 5,899,909 to Claren et al. ("Claren"), and further in view of US 5,741,323 to Pathak et al. ("Pathak"). As noted above, Lehe does not teach or suggest a dilator coupled to an end of a needle, wherein a width of the dilator increases from a first end of the dilator towards a second end of the dilator, and wherein the dilator is about 0.5 centimeters to about 4 centimeters in width at the second end of the dilator. Combination of Lehe with Gellman, Claren, and/or Pathak does not overcome this deficiency. Accordingly claims 32 and 40 are non-obvious over the cited art, and Applicants request that the Examiner reconsider and withdraw the 35 USC 103(a) rejection of claims 32 and

47 based on Lehe in view of Gellman, Claren, and/or Pathak and pass these claims to allowance. Claims 47 and 54 are cancelled rendering the rejection of these claims moot.

3. Applicants Request Abeyance of the Double Patenting Rejection

Claims 24, 25, 27, 28, 29-36, 41, 43-50, 55, and 56 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 4, and 6-13 of US 6,689,047 to Gellman ("047 patent"). Applicants request that if this rejection is to be maintained that it be maintained in abeyance until the pending claims have been found allowable, at which point Applicants will evaluate the filing of a Terminal Disclaimer.

CONCLUSION

In view of the foregoing amendments and remarks, Applicants submit that the pending claims are in condition for allowance. Early and favorable reconsideration is respectfully solicited. The Examiner may address any questions raised by this submission to the undersigned at 617-951-7000. Should an extension of time be required, Applicants hereby petition for same and request that the extension fee and any other fee required for timely consideration of this submission be charged to **Deposit Account No. 18-1945**, under Order No. MIY-P02-010 from which the undersigned is authorized to draw.

Dated: May 2, 2005

Respectfully submitted,

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